

For reference in Examiner's Answer

In re Appln. of Cox et al.  
Application No. 10/775,746  
Response to Office Action of February 8, 2008

**APPENDIX B**  
**EXECUTED DECLARATION/AFFIDAVIT UNDER 37 C.F.R. §1.132 WITH**  
**EXHIBITS**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT(S):	Cox et al.	DOCKET NO:	P2702US
SERIAL NO.:	10/775,746	ART UNIT:	3677
FILED:	February 10, 2004	EXAMINER:	William L. Miller
CONF. NO.:	1553		
TITLE:			Method for Customizing a Burial Vault Carapace

**AFFIDAVIT UNDER 37 C.F.R. § 1.132  
(Revised)**

I, Marty Jay Cox, a citizen of the United States of America residing at 5680 S. Bogey Drive, Polo, Illinois 61064, do hereby declare that:

I am a coinventor of the invention claimed in U.S. Patent Application No. 10/775,746.

Before I conceived of the invention claimed in the patent application, I was employed by Professional Graphics, Inc. as a pre-press and printing broker. I had no prior experience running a business, selling or marketing products or acting as an officer of a company. Christie Marie Cox, coinventor of the invention, was employed as a funeral director and embalmer. Mrs. Cox also had no prior experience running a business, selling or marketing products or acting as an officer of a company.

Mrs. Cox and I realized that the burial receptacle, such as a vault, is a cold and impersonal container into which the deceased is placed. We realized that the burial receptacle lacked continuity with the funeral, which is largely personalized with artifacts and pictures of the deceased and his or her family.

To solve this problem, Mrs. Cox and I conceived of the claimed invention, which in its commercial embodiment takes the unadorned receptacle, such as a burial vault or urn or other repository, and makes it appealing and personalized for each funeral and each deceased. It brings color and life through adornment to that which was once, plain and ordinary.

After we conceived of the claimed invention, Mrs. Cox and I worked from our home to develop the invention and founded our company Legacy Prints, Inc. I am the President of Legacy Prints and Mrs. Cox is the Secretary (co-owner). The company has four (4) employees.

In October 2003, we introduced our invention at the National Funeral Directors Association (NFDA) convention for all funeral directors nationwide. Wilbert Funeral Services, a leading vault manufacturer, deemed it a marketable product and wanted to sell it in the United States and Canada. We have been supplying products embodying our invention to Wilbert. This invention was the only one of its kind at the NFDA convention and we received very promising feedback on the invention.

The product that was originally supplied, continue to be supplied, and whose sales figures are provided below, embody the elements of at least claim 1 in the application (hereinafter, and for the purposes of this declaration only, "the invention", namely:

A carapace for a burial vault having a top surface, and attached to this top surface is a substrate having a decorative graphic; an adhesive interposed between the carapace and the substrate and adhering the substrate to the carapace, where the substrate is formed from a material selected from the group consisting of polyester, polypropylene, polyethylene, vinyl, acetate, acrylic, polystyrene and polycarbonate.

The following table illustrates the increasing gross sales and the increasing market share:

<b>Sales Year</b>	<b>Sales Units</b>	<b>Burial Vault Market Sales</b>	<b>% Market</b>
2003	3,583	1,752,834	0.002044%
2004	5,168	1,657,929	0.003117%
2005	5,748	1,653,129	0.003477%
2006	7,300	1,648,329	0.004429%

*Table 1*

These market share figures are based on the attached report Exhibit 6, entitled, "Projected vs Actual Death and Cremation Numbers" that was produced by the Cremation Association of North America (CANA) in 2005 ("the CANA Report"), which is the most recent report I was able to locate with such relevant data.

According to CANA's web page (see Exhibit 7):

Founded in 1913, the Cremation Association of North America (CANA) is an International organization of over 1300 members, composed of cemeterians, cremationists, funeral directors, industry suppliers and consultants. CANA members believe that cremation is preparation for memorialization.

The number of burial vaults was determined by subtracting the number of cremations from the number of total deaths, which is an accurate method to estimate the burial vault sales.

Our information on sales units for the year 2007 was lost in a computer-related disk drive accident, and is therefore unavailable for inclusion in Table 1.

The CANA report provides actual cremation numbers for the years 2003 and 2004. Table 1 uses an estimate for based on a linear regression model based on actual values for year 2004, and projected values for 2010 in the CANA Report. Accordingly, the model used was ( $y = mx + b$ ), where (for number of burial vault sales, which is total deaths minus cremations)  $m = -4800$  and  $b = 11,277,129$ . A linear regressions model is a reasonable

model to use in this time frame. The Cana Report and Table 1, in general, show a trend towards more cremations and less use of burial vaults.

Table 1 further shows a steadily increasing market share, despite the declining market for burial vaults.

These increased gross sales as well as increasing percentage of market share occurred despite the entry of competitors into this market.

Although I do not have direct evidence of copying of our invention by competitors (which would be exceptionally difficult for me to obtain under the present circumstances), I find the circumstantial evidence of copying to be compelling. No reasonable person could conclude that the sudden appearance of a rush of competitors producing a product encompassing the elements of the invention is mere coincidence.

Despite the fact that burial vaults have been used back into antiquity, until our introduction in the marketplace of the invention at the NFDA in October 2003, I was unaware of any sales of carapaces that comprised the invention.

One year later, in October 2004, I noticed at the NFDA convention that Doric Vaults had copied our invention and was selling it. Photographs from that convention and the Doric Vaults exhibit are attached hereto as Exhibit 1.

In the February 21, 2005, edition of *Newsweek*, our invention was covered in the Periscope section. *Newsweek* noted that, "Customizing burial vaults...has become a popular way to pay tribute...." A copy of the article is attached hereto as Exhibit 2. Ray Simon is an artist that create the artist design for the prints used in connection with the products we supply to Wilbert Funeral Services.

In October 2005, I noticed at the NFDA convention that Doric Vaults was still selling copies of our invention (see Exhibit 3). In addition, another company, Trigard, had started selling copies of our invention. Attached as Exhibit 4 is a copy of a recent Trigard website page indicating that they are now selling the invention as well. We have since learned that even monument companies are copying our invention.

The November 26, 2004 edition of the *Omaha World-Herald* noted in "Burial Vault Artwork Adds Personal Touch" that the invention was a "relatively new practice in the funeral industry" but that "most vault makers now offer the option." A copy of the article is attached hereto as Exhibit 5. This article, too, mentions that Ray Simon is the artist that designs the prints used on the products we supply to Wilbert Funeral Services. Exhibit 5.


In October 2006, Wilbert Funeral Services made the invention a "standard offering" on their vaults. This means that, within the next two years, every Wilbert distributor will be required to offer a selection of vaults the include the invention. In addition, Wilbert has changed the design of its lowering mechanisms so that the mourners can better see at the graveside the personalization of burial receptacles such as vaults.

The fact that our competitors (see, e.g., Exhibit 4) are advertizing the features claimed in our invention (topside decorative appliqué for the burial vault) strongly suggests that the

commercial success flows from the functions and advantages as disclosed in the specification and is derived from the claimed invention.

The tremendous commercial success of our product can be seen by the substantially increasing units sold over the years along with a greater market share, the copying of our product as time went on, Wilbert making the invention a standard offering and the changing, by Wilbert, of its design for lowering mechanisms to better accommodate the invention.

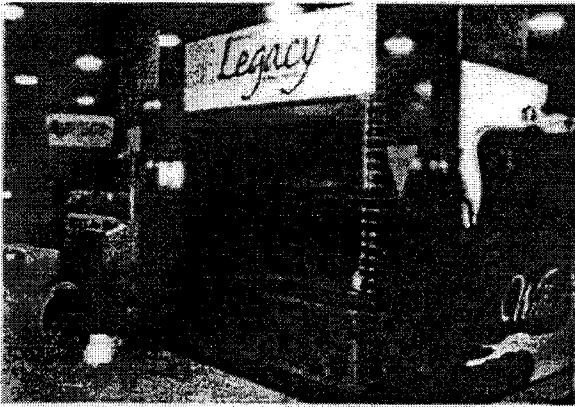
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Marty Jay Cox	Date: <u>7-7-08</u> 
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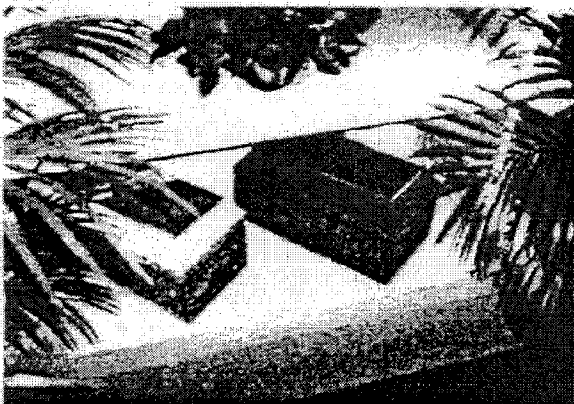
# 2004 NFDA

Exhibit 1

## Legacy



## Competitors



# Periscope

## VAULT ART

### The View From the Beyond

**M**ARINE CPL. SHANE Kielion, 23, died in Fallujah last Nov. 15—hours after his wife gave birth to their first son. At a graveside service in Omaha, Neb., nine days later, mourners gathered around Kielion's burial vault to admire images adorning the lid: the statue of Saddam Hussein toppling, tanks storming the desert, an Iraqi girl waving an American flag.

Customizing burial vaults, the boxes that protect a casket after interment, has become a popular way to pay tribute to fallen veterans. Ray Simon of



**STYLISH DEPARTURES:** Decorated burial vaults capture the memories

Youngstown, Ohio, began designing images two years ago and has since completed more than 500 orders. "Memorials are no longer just for presidents. They are being presented to your hometown heroes," says Simon, whose paintings honor vets of WWII, Korea, Vietnam and Iraq, and firefighters and police who lost

their lives on 9/11. The original paintings are made into prints, affixed to a thin layer of transparent vinyl and attached to the vaults. Because the images are buried along with the deceased, Simon sends families 16-by-20-inch replicas. Good thing. Roger Kielion, Shane's father, says, "It's a shame they had to cover it up." —WILLIAM LEE ADAMS

## SURGERY

### A Taxing Procedure

**T**AXING BREAST implants is the latest tool states are using to augment their revenues. New Jersey pioneered the idea in September, when it became the first state to levy a 6 percent tax on elective cosmetic procedures, such as liposuction and face-lifts. Now similar taxes are up for debate in Washington and Illinois, and other states are said to be considering cosmetic-surgery tax legislation.

Botox and breast implants make an easy target for cash-

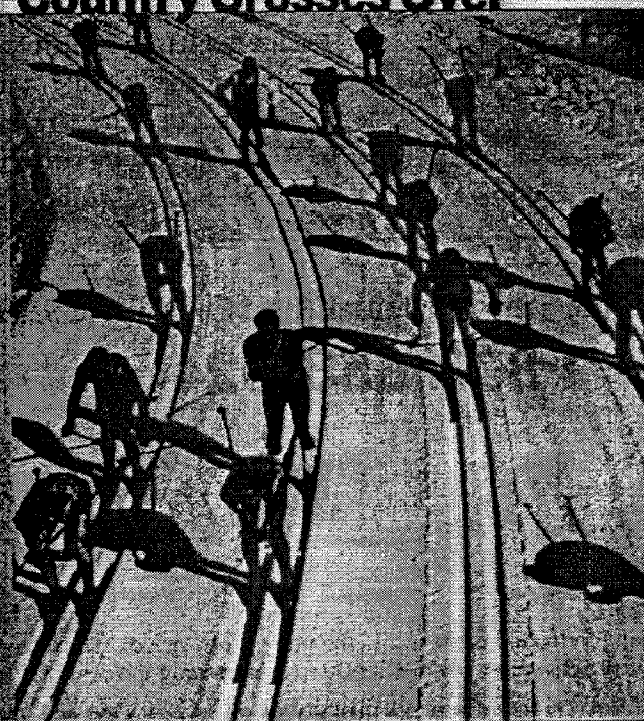


**FACE-OFF:** States want new taxes

strapped states like Washington, which faces a deficit of roughly \$2 billion. After all, the American Society of Plastic Surgeons reports that in 2003, Americans spent \$8.4 billion on cosmetic procedures. Doctors and medical groups oppose the taxes, saying they discriminate against women, who made up 86 percent of those getting procedures in 2003. But Washington state Sen. Karen Keiser, who notes that revenues from her state's tax would go to health services for children, says it might even give the industry a lift. "[It's] a little incentive to get something done," she says. It's for the kids, after all. —KAREN SPRINGER

### SKIERS Cross-Country Crosses Over

**W**hen does a sport officially go "mainstream"? One sign: when parents are frightened by their kids' participation. "He hasn't hurt himself yet," says David Howell about Andrew, his son. "I've got my fingers crossed." David does have some reason to worry, even though Andrew is a star in the world of extreme cross-country skiing, inspired by the acrobatics of snowboarders and skiers, young Nordic skiers are taking to the air themselves. In Nordic races, popular in Europe, competitors start in a mass and fly down a winding course. Races are full-contact. "We're trying to remake the image of cross-country," says Colin Bell, organizer of North America's first big "Nordic skiercross" event, in Calgary on April 2. He's not the only one: In the past few years, at least 15 U.S. cross-country ski-touring centers have built terrain parks.



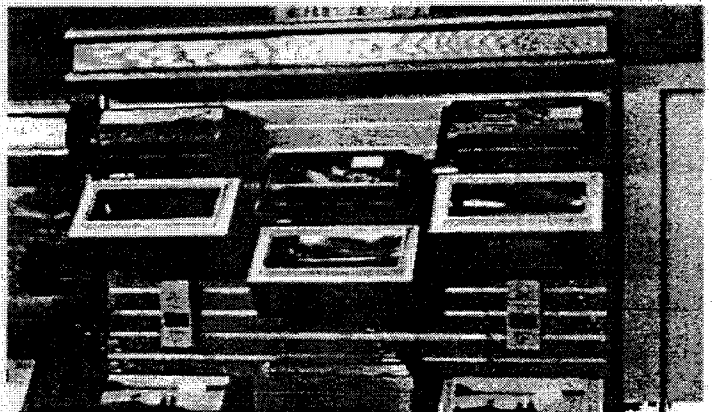
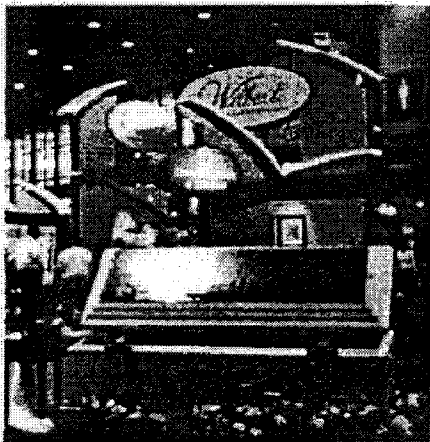
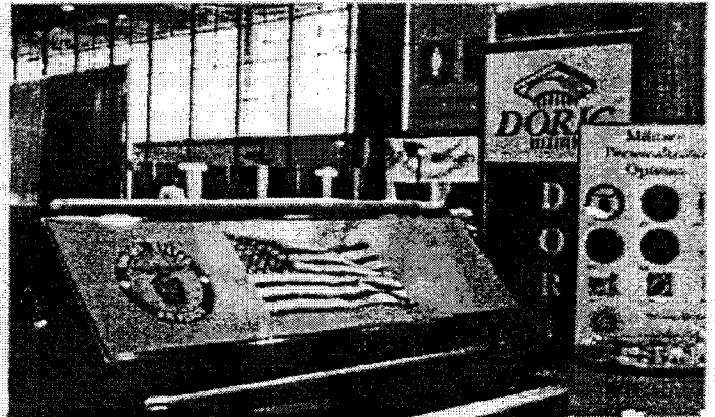
**NO SLUMP AT THIS SLOPE** Skiercross is a new, more extreme form of cross-country skiing.

# 2005 NFDA

Exhibit 3

## Legacy

## Competitors





## FUNERAL PRODUCTS & SUPPLIES

SERVING THE FUNERAL INDUSTRY

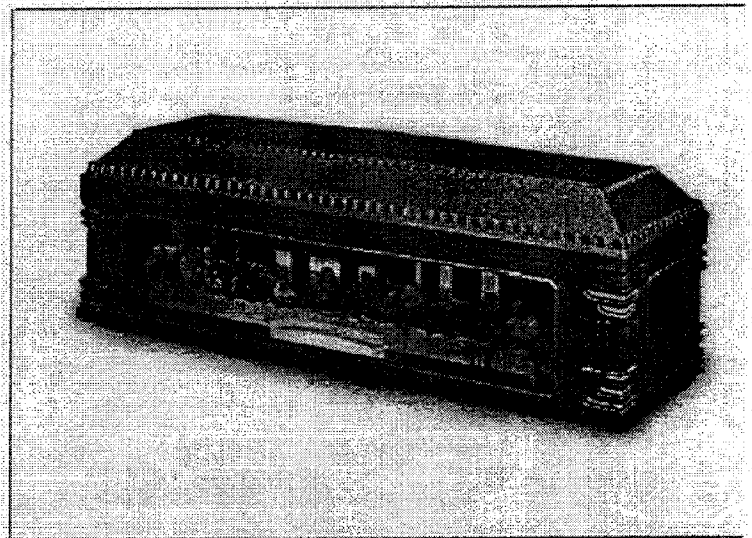
[RETURN TO PRODUCT MENU](#)

# Appliqué

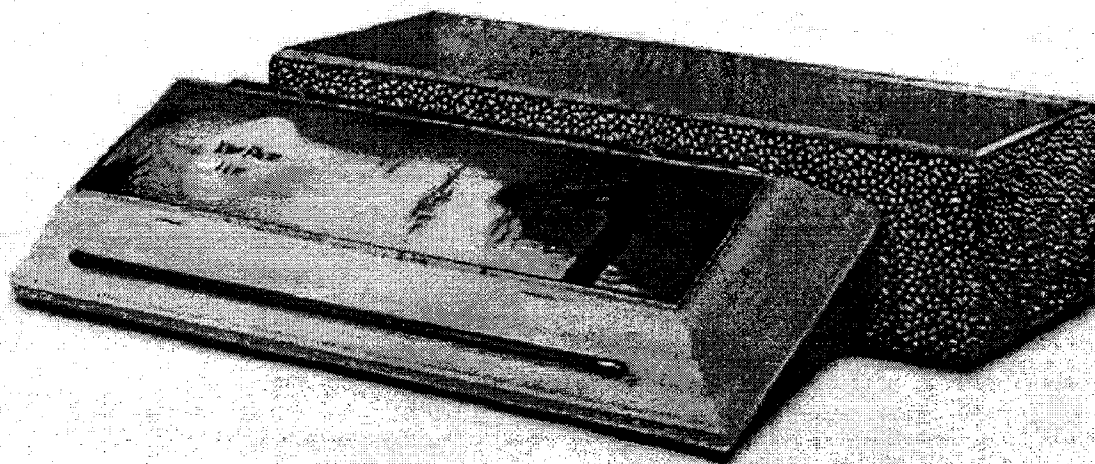
### Aegean Side Appliqués and New Topside Appliqués!

#### Aegean Appliqués

Along with our new library of high-quality Aegean appliqués, Trigard presents a new appliqué that can be placed on the top carapace of a Tremont or our metal lined vaults. Just like our unique Aegean side appliqués, we can personalize the topside appliqué with any number of stock scenes, personalized photographs, name or date. The adhesive topside appliqué is easy to apply and is yet another way that Trigard allows you to personalize your vault. From sports, landscapes, hobbies, military and religious scenes, the possibilities are endless.



#### Topside Appliques



### Library of Appliqués

We are constantly updating our library of appliques, so if you do not find what you are looking for in this list, please email or call our customer service representatives. Keep in mind that some categories have several different appliques to choose from, and we would be happy to email you a proof before we print your appliqué. Personalization is available, and the possibilities are limited only by your imagination.

Hobbies  
Airplanes  
Art  
Baking  
Boating  
Cards  
Coffee  
Flag  
Crochet  
Crossword  
Doctor  
Fishing  
Flute  
Gardening  
Harley  
Horses  
Hot Air Balloons  
John Deere  
Knitting  
Motorcycle  
Patchwork  
Piano  
Railroad  
Scrapbooking  
Sewing  
Sheet Music  
Skydiving  
Surfing  
Theater  
Trains  
Violin

Religious  
Angels  
Bible  
Candles  
Crosses  
Crucifix  
Dove  
Jesus on Cross  
Last Supper  
Mary & Jesus  
Praying Hands  
Star of David

Sports  
Baseball  
Billiards  
Bowling  
Busch Stadium  
Cycling  
Fenway Park  
Football  
Golf  
NASCAR  
Poker  
Running  
Waterskiing

Landscape/Nature  
Barn  
Beach  
Boats  
Bridge  
Castle  
Clouds  
Covered Bridge  
Dolphins  
Ducks  
Fall Trees  
Farmland  
Field  
Fish  
Flowers  
Green Pasture  
Hay Rolls  
Heart Shaped Cloud  
Hummingbird  
Lakeside bench  
Lighthouse  
Mountains  
Ocean  
Rainbow  
Sea Turtle  
Spain  
Sunset  
Swan  
Waterfall  
Wooded Road

Patriotic  
Blue Angels  
Camouflage  
Dog Tags  
Eagle  
Fireworks  
American Flag  
Statue of Lib.  
Salute

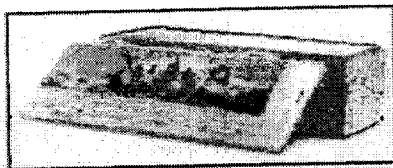
Published Friday  
November 26, 2004



## Burial vault artwork adds personal touch

BY KRISTIN ZAGURSKI  
WORLD-HERALD STAFF WRITER

An Iraqi girl waves an American flag. A U.S. tank topples a statue of Saddam Hussein. Soldiers march and tanks roll by as planes whiz overhead.



A photo from the manufacturer shows a print like the one placed on Marine Cpl. Shane Kielion's burial vault.

After Marine Cpl. Shane Kielion's graveside services Wednesday at St. John Cemetery in Bellevue, Kielion's mother, Pat, stepped forward to look more closely at the vivid scenes.

She was followed by other mourners who wanted to see the lid to Kielion's metal burial vault. It had been covered with a colorful print depicting images of the war in Iraq. Written on the lid were Kielion's name, unit and years of birth and death.

The burial vault for Army 1st Lt. Edward Iwan of Albion, Neb., who was buried Monday and like Kielion was killed in the fighting in Fallujah, Iraq, also was decorated. In Iwan's case, the vault had an emblem of a saluting soldier.

Customizing the lids to burial vaults is a relatively new practice in the funeral industry, but it seems to have caught on with the families of war veterans, as well as firefighters and police officers.

An American flag covered the lid of Omaha Police Sgt. Jason Tye Pratt's vault. Pratt was killed in the line of duty in September 2003.

Since a burial vault holds the casket, the images are seen for only a short time at the cemetery. Still, families see this as another way to personalize memorial services, and those in the industry say most vault makers now offer the option.

"All of the companies are very well aware of what's going on overseas and are trying to make those tributes as personal as possible," said David Walkinshaw, a spokesman for the Brookfield, Wis.-based National Funeral Directors Association.

Artist Ray Simon of Youngstown, Ohio, designed the print on Kielion's vault for Wilbert Funeral Services Inc. The local office for the company, Omaha Wilbert Vaults Inc., donated the print, though not the vault. It also supplied Pratt's vault.

The Broadview, Ill., company has prints commemorating veterans of World War II, the Korean and Vietnam Wars and the New York City rescue teams from the Sept. 11, 2001, terrorist attacks. It also has nonmilitary images that include a country road, a snow-covered bridge and mountains.

The artwork is applied to a clear sheet of vinyl, which is affixed to the lid.

The vividness of the artwork and the detail of the letters make it look as if the image is painted on the lid and the letters engraved, said Kelly Nobiling, vice president with Wilbert Vaults.

"It's personalizing it for the family," she said. "It's making it special."

Contact the Omaha World-Herald [newsroom](mailto:newsroom@worldherald.com)

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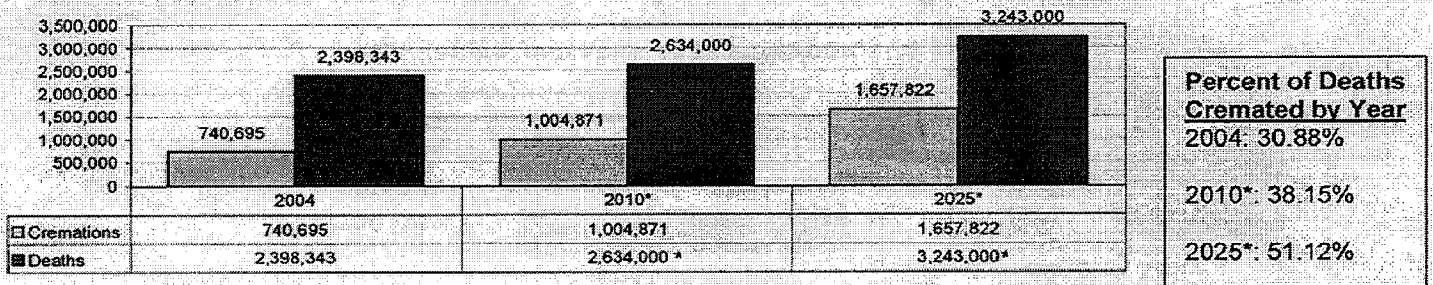
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[http://www.omaha.com/toolbox/story\\_printer.php?u\\_id=1268934&u\\_brow=Internet+Exp...](http://www.omaha.com/toolbox/story_printer.php?u_id=1268934&u_brow=Internet+Exp...) 11/26/2004

### Projected vs. Actual Death and Cremation Numbers

The graph below shows a comparison of the number of deaths and cremations for the years 2004, \*2010 and \*2025. The 2004 death rate is extracted from the National Vital Statistics System. The 2010 and 2025 death rates were extracted from the US Department of Commerce, Bureau of the Census' *Projections of the Population of the United States by Age, Sex and Race: 1988 to 2080, Series P-25, No. 1018*.

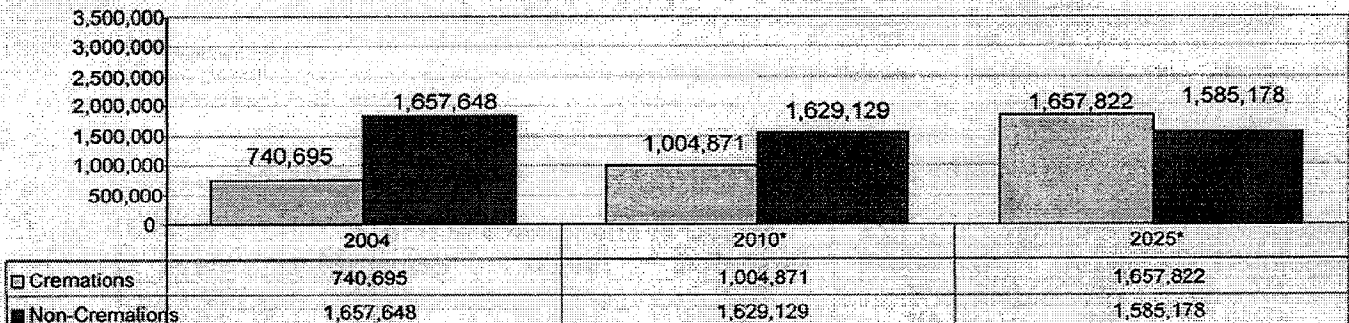
#### Deaths and Cremations Projected - United States Only



\*Projected figures.

### Disposition Figures: Cremations vs. Non-Cremations

#### Cremations and Non-Cremations Projected - United States Only



Total Deaths	2,398,343	2,634,000*	3,243,000*
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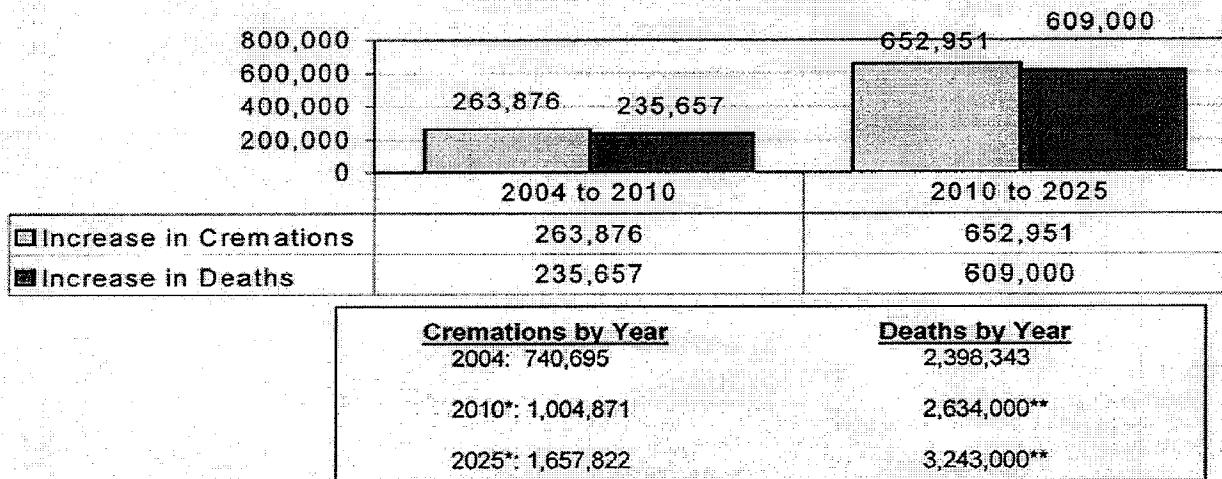
\*Projected figures.

## Exhibit 6

### • Comparison of Projected Cremations and Deaths

Interestingly, the increase in the rate of cremations in the United States exceeds the increase in deaths when comparing 2004 actual rates to 2010 projected rates (see graph below). For example, CANA predicts that there will be an increase of approximately 263,876 more cremations, but only 235,657 more deaths in 2010 than there were in 2004. This indicates that not only will the number of cremations performed in seven years increase because of the increasing number of deaths, but the number will be even greater because the percentage being cremated is increasing as well.

#### Projected Increase of Cremations and Deaths- United States Only



\*Projected figures.

\*\*US Department of Commerce, Bureau of the Census' Projections of the Population of the United States by Age, Sex and Race: 1988 to 2080, Series P-25, No. 1018.

#### CANA's Projections versus Actual Death to Cremation Comparisons

Year	% of U.S. Cremations to Deaths			# of U.S. Cremations (in thousands)		
	Projected	Actual	Difference	Projected	Actual	Difference
1987	14.9%	15.2%	+0.3%	NA	NA	NA
1988	15.7%	15.3%	-0.4%	NA	NA	NA
1989	16.2%	16.4%	+0.2%	NA	NA	NA
1990	16.9%	17.0%	+0.1%	NA	NA	NA
1991	17.47%	18.50%	+1.03%	NA	NA	NA
1992	18.89%	19.11%	+0.22%	NA	NA	NA
1993	20.16%	19.78%	-0.38%	438.5	448.5	+10.0
1994	20.79%	20.60%	-0.19%	469.2	471.0	+1.8
1995	21.49%	21.14%	-0.35%	496.8	488.3	-8.5
1996	21.78%	21.31%	-0.47%	514.1	492.4	-21.7
1997	22.04%	23.13%	+1.09%	520.9	533.8	+12.9
1998	23.75%	24.10%	+0.35%	553.4	563.4	+10.0
1999	25.39%	25.04%	-0.35%	595.6	598.7	+3.1
2000	25.56%	26.11%	+0.55%	605.1	627.7	+22.6
2001	27.25%	26.93%	-0.32%	651.2	650.7	-0.5
2002	27.78%	27.75%	-0.03%	677.7	678.1	+0.4
2003	28.63%	28.41%	-0.22%	693.7	695.6	+1.9
2004	29.61%	30.88%	+1.27%	708.7	740.7	+32.0

## Exhibit 7



Site Search

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### Who is CANA?

Founded in 1913, the Cremation Association of North America (CANA) is an International organization of over 1300 members, composed of cemeterians, cremationists, funeral directors, industry suppliers and consultants. CANA members believe that cremation is preparation for memorialization.

The Cremation Association of North America was originally formed to promote the "modern way" and the "safe and hygienic way" of dealing with a dead human body. It was a form of disposition and had nothing to do with the funeral and memorialization of the deceased.

At that time, and up into the early 1920's, cremation was the choice of the wealthy and the well-educated. All crematories were located on cemetery property and elaborate columbariums were built for the elaborate urns then being used.

After it became apparent, through scientific investigation, that proper in-ground, full body burial was safe, cremation fell out of favor and remained in the 3 % to 5% range. It wasn't until the early 1980's that the rate reached double digits and started to increase on the average of about 8% annually.

In 1985 CANA, which had been monitoring the annual national and state cremation rates, projected the cremation rate for the year 2000 would be a little over 25%.

This prediction made a real impact in the death care profession because that projected to over 600,000 cremations in 2000 compared to fewer than 300,000 in 1985.

CANA's projection was actually a little under the actual cremation percentage for 2000 as the rate was 26.19% with 629,362 cremations. Since 2000, CANA has projected the cremation rate to 2010 and 2025, which based on current confirmed figures of 2004 (30.88%) and preliminary 2005 figures (31.99%), stand at 35.07% for 2010 and 51.12% for 2025, which equates to nearly 1,657,822 United States cremations in 2025.

A CANA survey done in 1998 showed that 26% of those cremated were Catholic, and recent survey results from other groups now put that figure at 30%, which would mean that approximately 420,000 Catholic cremations would occur in 2025, with over 200,000 Catholics being cremated in 2003.

- CANA members have recognized this steady growth of cremation and have been active in promoting the importance of memorialization when cremation is chosen.
- CANA is not a 'pro-cremation over burial' association, but is concerned with the proper treatment and respect for those who have chosen cremation and that cremation is preparation for memorialization.

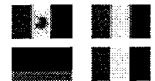
### CANA Code of Cremation Practice

In the practice of cremation, we believe:

- In dignity and respect in the care of the deceased, in compassion for the living who survive them, and in the memorialization of life;
- That a Cremation Authority should be responsible for creating and maintaining an atmosphere of respect at all times;
- That the greatest care should be taken in the appointment of crematory staff members, any of whom must not, by conduct or demeanor, bring the crematory or cremation into disrepute;
- That cremation should be considered as preparation for memorialization;
- That the dead of our society should be memorialized through a commemorative means suitable to the survivors.

Officers
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Committees
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For Funeral Homes
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Translate:

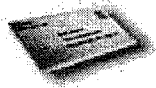


## Exhibit 7

CANA also feels that the word "cremains" should not be used when referring to "human cremated remains" as "cremains" has no real connection with the deceased whereas a loved one's "cremated remains" has a human connection.

During their annual convention and trade show in August, 2004, the International Cremation Federation met with CANA for the first time to discuss the topic of cremation.

A membership in CANA is the best way for any cemeterian or funeral director to stay abreast of what is going on in cremation and how to deal with an aging population that is choosing cremation in greater and greater numbers.



[\[Home\]](#) [\[About CANA\]](#) [\[Membership\]](#) [\[Publications\]](#) [\[Statistics\]](#) [\[For Consumers\]](#) [\[CANA Showcase\]](#)

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